

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CRIMINAL No. 05-30042 MLW

UNITED STATES OF AMERICA)
) DEFENDANT'S MOTION
v.) FOR TRANSCRIPT OF
) PRIOR PROCEEDINGS
RICARDO DIAZ)

NOW comes the defendant herein, Ricardo Diaz, and respectfully requests that the stenographer in this case be ordered to provide the defendants, at the government's expense, transcripts of the following:

1. Pretrial conference on August 9, 2006.
2. Pretrial conference on September 20, 2006.
3. Pretrial proceedings and jury trial, exclusive of the jury selection process, on September 25 through 27, 2006.

The defendant states as grounds for this request the following:

1. Transcription of the pretrial proceedings is necessary to enable the defendants to accurately present arguments in support of their Motion to Dismiss, arising out of representations as to the scope of the conspiracy, and the effect of those representations on the manner in which hearsay was handled at trial, all of which is germane to the misjoinder of offenses contributing to the mistrial.
2. Transcription of the aborted jury trial is reasonably necessary to protect the defendants by preserving exculpatory testimony elicited from government witnesses. It is also reasonable to assume that availability of the transcripts may expedite a retrial by obviating disputes over matters which were conceded at the previous trial.
3. The defendants in this case are indigent, and represented by CJA appointed counsel. Counsel would seek the above-described transcript and have them paid for by the defendants if representing clients who had the means to pay for such transcription.

4. Defendant Cesar Cruz joins in this motion.
5. The government does not oppose this motion.

Wherefore the defendant respectfully requests that the above-described relief be granted.

DATED: October 10, 2006

Respectfully submitted,
Ricardo Diaz, Defendant

By: /s/ Terry Scott Nagel
Terry Scott Nagel, Esq.
95 State Street, Suite 918
Springfield, MA 01103
(413) 731-8811
BBO#: 366430

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
CRIMINAL No. 05-30042 MLW

UNITED STATES OF AMERICA) AFFIDAVIT IN SUPPORT OF
) DEFENDANT'S MOTION
v.) FOR TRANSCRIPT OF
) PRIOR PROCEEDINGS
RICARDO DIAZ)

NOW comes the undersigned Terry Scott Nagel and says

1. My name is Terry Scott Nagel. I am a member of the bar of the Commonwealth of Massachusetts in good standing. I have defended over 40 persons charged with homicide. I have been a member of the CJA panel for many years, and have represented several defendants at trial before the United States District Court.
2. In my professional opinion, transcription of the pretrial proceedings in this matter is necessary to enable the defendants to accurately present arguments in support of their Motion to Dismiss, which arise out of representations as to the scope of the conspiracy, and the effect of those representations on the manner in which hearsay was handled at trial. This issue is in addition to, and distinct from, the issue presented by the late disclosure of exculpatory evidence.
3. In my professional opinion, transcription of the jury trial which ended in a mistrial is reasonably necessary to protect the defendants by preserving exculpatory testimony elicited from government witnesses. It may also expedite a retrial by eliminating disputes over matters which were conceded at the previous trial.
4. The defendants in this case are indigent, and represented by CJA appointed counsel. I would seek the above-described transcripts and have them paid for by the defendants if representing a client who had the means to pay for such transcription.

Signed under the pains and penalties of perjury,

By: /s/ Terry Scott Nagel Dated: October 10, 2006
Terry Scott Nagel, Esq.

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on October 11, 2006.

/s/ Terry Scott Nagel